

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

LUIS MANUEL PENA,

Petitioner,

V.

CHRISTOPHER DAVIES, et al.,

Respondents.

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Civ. No. 15-7291 (KM)

MEMORANDUM AND ORDER

Petitioner, Luis Manuel Pena, is an immigration detainee currently detained at the Bergen County Jail in Hackensack, New Jersey. He is proceeding with *pro se* with a petition for writ of habeas corpus pursuant to § 2241.

The sole proper respondent in this case is Christopher Davies, who is the warden of the Bergen County Jail. *See Rumsfeld v. Padilla*, 542 U.S. 426, 434-35 (2004). Therefore, the petition will be dismissed with prejudice as to respondents Jeh Charles Johnson and the Department of Homeland Security. It will proceed against Davies only.

Mr. Pena’s federal habeas petition challenges in part his current immigration detention. “Federal courts have habeas jurisdiction to examine the statutory and constitutional bases for an immigration detention unrelated to a final order of removal.” *Ufele v. Holder*, 473 F. App’x 144, 146 (3d Cir. 2012) (citing *Demore v. Kim*, 538 U.S. 510, 517-18 (2003)); *see also Diop v. ICE/Homeland Sec.*, 656 F.3d 221, 226 (3d Cir. 2011). In accordance with Rule 4 of the Rules Governing Section 2254 Cases, applicable to § 2241 cases through Rule 1(b) of the Rules Governing Section 2254 Cases, this Court has screened the habeas petition for dismissal and determined that dismissal without an answer and the record on this issue is not warranted. In addition to any arguments that respondent may make in the answer, respondent shall specifically

address the impact, if any, of *Chavez-Alvarez v. Warden York County Prison*, 783 F.3d 469 (3d Cir. 2015).

Accordingly, IT IS this 9th day of October, 2015,

ORDERED that the habeas petition is dismissed with prejudice as to respondents Jeh Charles Johnson and the Department of Homeland Security; and it is further

ORDERED that the Clerk shall serve a copy of the petition (Dkt. No. 1) and this Order upon the remaining respondent, Christopher Davies, by regular mail, with all costs of service advanced by the United States; and it is further

ORDERED that the Clerk shall forward a copy of the petition (Dkt. No. 1) and this Order to the Chief, Civil Division, United States Attorney's Office, at the following email address: USANJ-HabeasCases@usdoj.gov; and it is further

ORDERED that within thirty (30) days of the date of the entry of this Order, respondent shall file and serve an answer which responds to the allegations and grounds in the petition and which includes all affirmative defenses respondent seeks to invoke, in addition to any other arguments respondent may make, the answer shall specifically address the impact, if any, of *Chavez-Alvarez v. Warden York County Prison*, 783 F.3d 469 (3d Cir. 2015); and it is further

ORDERED that respondent shall file and serve with the answer certified copies of all documents necessary to resolve petitioner's claim(s) and affirmative defenses; and it is further

ORDERED that within thirty (30) days of receipt of the answer, petitioner may file a reply to the answer; and it is further

ORDERED that within seven (7) days of petitioner's release, by parole or otherwise, respondent shall electronically file a written notice of the same with the Clerk.



KEVIN MCNULTY
United States District Judge